IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Appellate Jurisdiction)

Tuesday, the Tenth day of october

Two thousand and six

PRESENT:

The Honourable THE CHIEF JUSTICE

The Honourable Mr. Justice D.MURUGESAN

and

The Honourable Mr.Justice R.SUDHAKAR

Writ Appeal Nos.173 & 230 of 2006
Listed with
W.P.Nos. 4908/2001, 6732/2002, 36706/2002, 39643 to 39645 of 2002, 40072, 40073/2002, 41172/2002, 46043/2002, 6059/2003, 6995 to 6997/2003, 7039/2003, 8271/2003, 9980/2003, 18014/2003, 22726/2003, 1504/2004, 23392/2003, 23678/2003, 23847/2003, 24318/2003, 24610/2003, 26252/2003, 26672/2003, 27214/2003, 27797/2003, 29490/2003, 30634/2003, 30720/2003, 34354/2003, 362/2004, 1127/2004, 1151/2004, 1199 & 1200/2004, 1505/2004, 1520, 1523, 1532 of 2004, 1704/2004, 1871/2004, 2645/2004, 2976/2004, 3884/2004, 4274, 4275/2004, 4285/2004, 4291/2004, 4304/2004, 4442/2004, 4496/2004, 4869/2004, 5473/2004, 5726/2004, 6114/2004, 6337/2004, 6346/2004, 6585/2004, 7465 & 7466/2004, 7848/2004, 8087/2004, 8750/2004, 9478/2004, 11733/2004, 13132/2004, 18951/2004, 19057, 19060 to 19062/2004, 21488/2004, 24890 to 24892/2004, 25235/2004, 25950/2004, 28819 & 28820/2004, 28910/2004, 30584/2004, 30675 to 30681 of 2004, 31687/2004, 31886/2004, 33196 & 33197/2004, 33389/2004, 33458/2004, 36732/2004, 37625/2004, 1309 & 1310/2005, 2092/2005, 2719/2005, 2812/2005, 4482 & 4483/2005, 4687/2005, 4797/2005, 6001/2005, 6692 & 6693/2005, 8296/2005, 8501/2005, 8573/2005, 9453 & 9454/2005, 12195/2005, 16160/2005, 20740/2005, 21103/2005 and 34108 of 2005

And
connected miscellaneous Petitions

W.A.No. 173 of 2006

M/s.Gowri Spinning Mills (P) Ltd.,
Rep. by the Managing Director,
Thokkampatti,Dharmapuri. … Appellants/Petitioners in WA No.173/06

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Vs.

1. Assistant Provident Fund Commissioner
   Sub Regional Office,
   Salem – 636 004.

2. Recovery Officer – II,
   Sub Regional Office,
   Sri Jayalakshmi Plaza,
   Anna Salai,
   Swarnapuri,
   Salem – 636 004. … Respondents/Respondents

WA No. 230/2006:

Sri Lakshmi Spinner (P) Ltd.,
rep. by its Executive Director,
No.10, Green Field Road,
Pulaiyakulam,
Coimbatore-45. ..Appellant/Petitioner

Vs.

Employees Provident Fund organisation,
Regional Office, LDC Road,
Madurai - 625 002. .. Respondent/Respondent

Appeal filed under Clause 15 of the Letters Patent against the order passed in W.P.M.P.No. 44206 of 2005 in W.P.No.41166 of 2005 dated 23.12.2005.

WPMP NO. 44206/05:

Petition to grant interim injunction restraining the second respondent from enforcing the recovery of Provident Fund Contributions pursuant to the order of the 1st Respondent in Proceedings No. TN/SL//ENF/III/21284/KRI-II/2004 dt. 6.8.04 without permission of Board for Industrial and finance reconstruction pending disposal of Writ Petition No. 41166/05 presented under ARticle 226 of the Constitution of India to issue Writ of Mandamus or any other writ or direction forbearing the first and second respondents from enforcing the recovery of Provident Fund contribution pursuant to the order of the first respondent in proceedings No. TN/SL/ENF-III/21284/KRI-II/2004 dated 6.8.2004 without Permission of Board of Industrial and Financial Reconstruction.

WPMP No. 1906/06:

Petition to grant interim stay of the operation of the order of the respondent dated 10.11.2005 bearing ref/no.TN/MD/5928/Enf/Spl.Task/RO/05 pending disposal of the Writ

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petition No. 1662/2006 presented under Article 226 of the Constitution of India to issue Certiorarified Mandamus after calling for the concerned records from the respondent, quash the order of the respondent dated 10.11.2005 bearing ref.No.TN/MD/5928/Enf/ Spl.Task/ RO/05 and consequently direct the respondent to approach the Board for Industrial and Financial Reconstruction for obtaining the consent for recovery of alleged non-remittance provident fund contribution for the period September 2000 to December 2000 and award cost.

For Appellant in
WA No. 173/06 :::: Mr. S.Sivanandam
For Appellant in
WA No. 230/06 :::: Mr. Balan Haridoss

For Respondents :::: Ms.V.J.Latha
in both W.As.

Writ Appeals under Clause 15 of the Letters Patent against the order of the Honourable Mr. Justice V. Dhanapalan, dated 23.12.2005 and 24.1.06 and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition MP No. 44206/05 in WP No. 41166 of 2005 and WPMP No. 1906/06 in WP No.1662/2006 respectively.

JUDGMENT: These Writ Appeals coming on for hearing on this day upon perusing the Grounds of Apeal, the order of the Honourable Mr.Justice V. Dhanapalan dated 23.12.2005 & 24.1.06 respectively and made in the exercise of the Special Original Jurisdiction of the High Court in Writ Petition MP No. 44206/05 in WP No. 41166/05 and WPMP 1906/06 in WP No. 1662 of 2006 and all other papers material to this case, and upon hearing the arguments of Mr. Balan Haridoss, Advocate for the Appellant in WA No. 230/06 and of Mr.S. Sivanandam, Advocate for the Appellant in WA No. 173/2006 and of Ms. V.J. Latha, Advocate for the respondents in both the Appeals, the Court made the following Judgment:-

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

The short but important issue which falls for our consideration in the present appeals is whether the action to recover the dues payable under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, is maintainable when the employer, who is sought to be proceeded against is an Industrial Company in respect of whom a proceeding is pending under the Sick Industrial Companies (Special Provisions) Act, 1985.

2. The appellants in the aforesaid writ appeals are sick companies within the meaning of Section 3(1)(o) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the SICA').

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The facts leading to these appeals are undisputed and need to be noted in brief.

Writ Appeal No.230 of 2006

The admitted facts are that the appellant company had committed defaults in remitting the amounts due to the Employees Provident Fund Scheme to the tune of Rs.10,96,676/- during the period from September 2000 to December 2000. Therefore, notice dated 10.11.2005 has been issued by the Regional Provident Fund Commissioner (C & R) Madurai calling upon the appellant to remit the amount of Rs.10,96,676/- within 10 days of receipt of the notice, failing which action will be taken under Section 8B to 8G of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the EPF Act') to recover the dues. In the meanwhile the appellant made a reference before the Board for Industrial & Financial Reconstruction (BIFR) under Section 15(1) of the SICA. The said application of the appellant is registered as Case No.401/2001. The application was rejected by the BIFR by order dated 01.05.2002 against which an appeal was preferred to the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). The appeal was allowed by the AAIFR vide order dated 07.11.2005 and the matter has been remitted back to the BIFR and consequently the matter is now with the BIFR. The appellant has challenged the notice under the EPF Act in W.P.No.1662 of 2006. The sole basis of the challenge is that having regard to the provisions of Section 22(1) of the SICA, the recovery proceedings without the consent of the BIFR are not maintainable. In W.P.M.P.No.1906 of 2006 the learned single Judge granted interim stay on condition of deposit of 50% of the total amount of dues within a period of four weeks, failing which the stay granted shall stand automatically vacated. Aggrieved by the order of the learned single Judge, the appellant has preferred the aforesaid writ appeal.

W.A.No.173 of 2006

The appellant company has become sick having accumulated losses exceeding its entire net worth within the meaning of Section 3(1)(o) of the SICA. The appellant has filed Form-A before the BIFR on 15.12.2004 and the reference is registered as Case No. 35/2005. The scheme for revival is not yet framed. In the meantime, the Assistant Provident Fund Commissioner determined the provident fund contribution by the appellant under Section 7A of the EPF Act for the period from 01.08.2003 to 30.06.2004 in TN/SL/ENF-III/21284/KR1/II/2004 dated 06.08.2004. The appellant has filed W.P. No.41166 of 2005 contending inter alia that as its reference is pending before the BIFR, the respondents are not empowered to take any coercive steps in view of Section 22 of the SICA. The grievance of the appellant is that even though the respondents are informed about the BIFR proceedings, they have initiated recovery proceedings without the consent from the BIFR and therefore, the said proceedings are liable to be quashed and set aside. In W.P.M.P.No.44206 of 2005, the learned single Judge granted interim injunction on payment of 50% of the amount to the authority concerned within a period of four weeks from the date of receipt of the order, failing which the order

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of interim stay shall stand automatically vacated. Being aggrieved, the appellant has preferred the present writ appeal.

3. In the writ appeals the principal submission of the appellants is that the appellants are sick companies within the meaning of Section 3(1)(o) of the SICA, and further according to the appellants, under Section 22 (1) of the SICA, when an enquiry under Section 16 is pending before BIFR, then notwithstanding anything contained in the Companies Act, 1956, or any other law, no proceedings for execution, distress or the like against any of the properties of the industrial company would lie or be proceeded with further except with the consent of the BIFR. It is further contended that since the EPF Act does not contain any non obstante clause and the SICA and the EPF Act are both special statutes, and since the SICA came into force later than the EPF Act, in that case, the provisions of the SICA must prevail over the EPF Act. Reliance is placed on an unreported decision of a Division Bench of this Court dated 02.11.2001 rendered in W.A.No.1831 of 2001 (M/s.ESSORPE Mills Limited Vs. Central Provident Fund Commissioner and Others). The Division Bench in the aforesaid case has held that in view of the provisions of Section 22 of the SICA no action for realization against a sick company relating to the amounts payable under the EPF Act is permissible without prior consent from the BIFR. The writ appeals were posted for hearing before the Division Bench to which one of us (A.P.Shah, C.J.) was a party. The Division Bench recording its disagreement with the aforesaid decision in M/s.ESSORPE Mills' case took a view that Section 22(1) of the SICA has no application and the proceedings under the EPF Act would not come within the purview thereof. Consequently, the matters came to be referred to the Larger Bench.

4. We have heard learned counsel appearing for the appellants and the respondents as well as learned counsel appearing for the intervenor companies whose writ petitions are listed along with the writ appeals.

5. The submission which has been urged on behalf of the appellants/intervenors is that the action which has been adopted by the authorities under the provisions of the EPF Act, is contrary to the provisions of Section 22(1) of the SICA. Learned counsel appearing for the appellants/intervenors submitted that Section 22(1) has been judicially interpreted by the Supreme Court as imposing restriction on even the recovery of the statutory dues. The effect of non obstante clause contained in Section 22(1) and the non obstante provisions of Section 32 of the SICA is that whatever may be the other law or its effect, no proceeding against the properties of a sick company would lie or be proceeded with. The SICA being a special statute in relation to sick industrial companies and a later statute, it will prevail over the general provisions of the EPF Act. Even where there are two special statutes which contain non obstante

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clauses, the later statute must prevail. It is therefore contended that Section 22(1) amounts to statutory interdict to the realization of the provident fund dues and for the same reason no steps can be taken to realize such dues by taking recourse to coercive measures.

6. Learned counsel appearing on behalf of the respondents, on the other hand, would urge that the provident fund dues are statutory liability and the Provident Fund Act is a piece of social welfare legislation enacted for the purpose of welfare of the labourers. If the industry is to run smoothly, the labour welfare legislation has to be given effect to and that construction of Section 22 of the SICA could not be given in such a way, which takes away or suspends the rights of the provident fund authorities from realizing the provident fund dues and/or damages. It is submitted that merely because the company is a sick company and it has been referred to the BIFR is not an impediment in recovering the dues of the provident fund. A reference was made to the amended Section 14-B of the EPF Act which empowers the Central Provident Fund Commissioner to recover damages where default had been committed in the payment of any contribution to the Fund and such damages can be reduced or waived in respect of a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the BIFR, but no protection has been provided thereunder as regards the contribution of the employees and/or the employer.

7. In order to appreciate the rival contentions which have been urged at the Bar, reference may be made to some of the fundamental provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The EPF Act has been enacted to provide for the "institution of provident funds, pension funds and deposit linked insurance funds for the employees in factories and other establishments". Therefore, it is a welfare legislation intended as a measure to provide social security. Under the provisions of the EPF Act a Scheme known as 'Employees' Provident Fund Scheme, 1952' has been framed. After the framing of the Scheme a Fund is established which is vested and administered by the Central Board constituted under Section 5 - A of the EPF Act. Section 6 of the EPF Act provides that 8-1/3 % of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees shall be deducted as contribution from the employees and an equal amount thereto shall be contributed by the employer. Section 6-A of the Act provides for the Employees Pension Scheme and Section 6-C for the Employees' Deposit Linked Insurance Scheme. Section 7-A empowers the Provident Fund Commissioner and his officers to determine, inter alia, the amount due from any employer under the provisions of the Act. Section 8 provides for the mode of recovery of moneys due from employees. Section 8-A provides for recovery of moneys by employers and contractors. Section 8-B provides that where an amount is in arrears under Section 8 the authorized officer may issue to the Recovery Officer, a certificate specifying the amount of arrears and the Recovery Officer on receipt of such certificate shall proceed to recover the amount specified therein from the

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establishment or employer by one or more of the modes, i.e., (a) attachment and sale of the movable or immovable properties of the establishment or the employer; (b) arrest of the employer and his detention in prison; and (c) appointing a receiver for the management of the movable or immovable properties of the establishment or the employer. Section 8-G provides that the provisions of the Second and Third Schedules to the Income-tax Act, 1961, and the Income-tax (Certificate Proceedings) Rules as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in Section 8 of the Act instead of to the income-tax. Section 11 of the Act provides for the priority of payment of contributions over other debts. Section 12 lays down that no employer shall, by reason only of his liability for the payment of any contribution under the Act or the Scheme reduce the wages of any employee or the total quantum of benefits in the nature of Old Age Pension, Gratuity, Provident Fund or Life Insurance to which the employee is entitled under the terms of his employment express or implied.

8. The penalties, which are provided for the breach of the provisions of the EPF Act, are contained in a group of Sections beginning with Section 14. Section 14-B of the Act empowers the Central Provident Fund Commissioner to recover damages from an employer who makes a default in the payment of contribution to the fund by the employer and the proviso appended thereto empowers the Central Board to reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the BIFR, subject to such terms and conditions as may be specified in the scheme. Section 14-B reads thus:-

> "14-B: Power to recover damages:-
>
> Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charge payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer, as may be authorized by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

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Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this Section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme."

9. Paragraph 26 of the Scheme under the EPF Act requires that every employee employed in or in connection with the work of a factory or other establishment to which the Scheme applies, other than an excluded employee, shall become a member of the Fund. Paragraph 30 of the Scheme postulates that the employer shall, in the first instance, pay both the contribution payable by himself and also, on behalf of the member employed by him, the contribution payable by such member. The principal employer is obligated to pay the contributions payable by himself in respect of employees directly employed by him as well as in respect of employees engaged by or through a contractor together with the administrative charges. Paragraph 31 of the Scheme provides that the employer shall not be entitled to deduct the employer's contribution from the wages of a member or otherwise to recover it from him. However, the employee's contribution can be recovered under paragraph 32 by the employer by means of a deduction from the wages of the members of the Scheme. Paragraph 32-B provides for the terms and conditions for reduction or waiver of damages, and it reads thus:-

"32-B. Terms and conditions for reduction or waiver of damages:-

The Central Board may reduce or waive the damages levied under Section 14-B of the Act in relation to an establishment specified in the second proviso to Section 14-B, subject to the following terms and conditions, namely;

(a) in case of a change of management including transfer of the undertaking to workers' Co-operative and in case of merger or amalgamation of the sick industrial company with any other industrial company, complete waiver of damages may be allowed;

(b) in cases, where the Board for Industrial and Financial Reconstruction, for reasons to be recorded in its scheme, in this behalf recommends, waiver of damages upto 100 per cent may be allowed;

(c) in other cases, depending on merits, reduction of damages upto 50 per cent may be allowed."

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10. Paragraph 38 of the Scheme provides that the employer before paying the member his wages in respect of any period or part of a period for which contributions are payable, was under an obligation to deduct the employee's contribution from his wages together with his own contribution, and administrative charges, and he shall within 15 days of the close of every month pay the same to the Fund by separate bank drafts or cheques.

11. It will be useful to refer to the relevant provisions of the Sick Industrial Companies (Special Provisions) Act, 1985. The Preamble of the Act states as follows:-

> " An Act to make, in the public interest, special provision with a view to securing the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy determination by a Board of experts of the preventive, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto."

Sections 3(b), 3(i) and 3(o) may also be read:-

> " 3(b). 'Board' means the Board for Industrial and Financial Reconstruction established under Section 4;
>
> 3(i). 'Operating Agency' means any public financial institution, State level institution, scheduled bank or any other person as may be specified by general or special order as its agency by the board;
>
> 3(o) 'Sick industrial company' means an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth."

12. Chapter III of the SICA deals with "References, inquiries and schemes". Section 15 thereof authorizes the Board of Directors of the Company to make a reference to the Board (BIFR) for determination of the measures which shall be adopted with respect to the company. Section 16 authorises the Board to make such inquiries as it may deem fit for determining whether any industrial company has become a sick industrial company. Section 17(2) says that where the Board is satisfied that a company has become a sick industrial company, it could give a reasonable time to the company to make its net worth positive. Where it is not practicable for sick industrial company to make its net worth positive within a reasonable time, Section 17(3) steps in authorizing the Board to direct any operating agency to prepare a scheme in relation to the company. The Board may specify the various measures to be considered by the operating agency. These measures are detailed out in Section 18 and the operating agency has to prepare a scheme as per the order specified by the Board. Under

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Section 18(3) of the Act a scheme prepared by the operating agency shall be examined by the Board and a copy of the scheme with modification made by the Board shall be sent to the sick industrial company and the operating agency. The draft scheme shall be published in brief in daily newspapers, inviting suggestions and objections. It is open to the Board to make modifications as it considers necessary in the light of the suggestions and objections received. It is thereafter the scheme is sanctioned by the Board and it shall come into force on such date as the Board may specify in that behalf. Section 19 of the Act provides for rehabilitation by giving financial assistance.

13. Section 22 of the Act provides for suspension of legal proceedings, contracts, etc., in respect of the cases mentioned therein. Sub-section (1) of Section 22, as amended in 1993, reads thus: -

> "Section - 22: Suspension of legal proceedings, contracts, etc.
>
> (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956, or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board, or as the case may be, the appellate authority.

Section 22 (1) of the Act comes into operation where an inquiry under Section 16 is pending or a scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending before the Appellate Authority. The provisions of Section 22 of the Act have an overriding effect notwithstanding anything contained in the Companies Act, 1956 or any other law. In fact, once a scheme is made, even the scheme is given an overriding effect by Section 32 of the SICA.

14. Both the statutes are special statutes. Whereas the object of enactment of the SICA was to provide for the revival and rehabilitation of sick industrial companies, the object of the EPF Act, as indicated herein before, was a measure to provide social security to the employees. The contribution of the employees as well

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as the employer towards provident fund is not a tax due. It is also not an amount recoverable under a contract. The moneys, which have been deducted from the wages of the employees as well as the amounts, which the employer is required to pay as its contribution, belong to the employees, and constitute their rightful and just entitlement for the eventual payment of provident fund benefits.

15. In our opinion, the provision of Section 22(1) of the SICA has no application to the provident fund dues and the provisions of the EPF Act would not come within the purview thereof. The provident fund and other dues payable under the EPF Act are part of the legitimate statutory settlements of the workers. The employer is obligated to pay the contribution of the employees as well as his contribution to the Fund, which is set up under the Act, and the Scheme framed there under. The employees' contribution together with the employer's contribution is required to be paid into the Fund by the employer within the stipulated period. These amounts whether by way of contribution of the employee or the contribution of the employer, are moneys which belong to the employee. An account which is required to be maintained in the name of each member of the provident fund, contains contribution of the employee, the employer as well as the interest which has been credited. Provident Fund is the foundation of an important measure of social security provided to employees of those establishments to whom the Act applies. In the aforesaid situation, an employer cannot refuse to comply with the statutory mandate to pay the contribution made by the employees as also his share, which was by way of social security scheme. Although the object of the SICA is laudable, but, in our view, the same should not deprive the hard earnings of the employees. It does not and cannot stay the recovery proceedings for recovery of money to which employees are entitled by way of social security scheme. The money does not belong to the company it belongs to the employees. These moneys can be withdrawn by the employees in certain eventualities even prior to the attainment of age of superannuation. The Scheme makes provision for withdrawal from the Fund and for the grant of advances from the Fund in special cases.

16. The interpretation of Section 22 of the SICA vis-à-vis other Acts came up for consideration in various decisions of the Supreme Court. In Maharashtra Tubes Limited v. S.I.I.C, Maharashtra, 1993 (2) SCC 144, the provisions of Section 29 of the State Financial Corporations Act, 1951 and Section 22(1) of the SICA came up for consideration. The Supreme Court held that the provisions of Section 22(1) of the SICA are of wide amplitude and thus will prevail over the provisions of Section 29 of the State Financial Corporations Act, which provides for coercive steps against the defaulting industrial concerns in repayment of loans taken by the industrial concerns. It was also held that the word 'proceeding' in Section 22(1) cannot be given a narrow or restricted interpretation so as to confine it only to legal proceedings, and a proceeding under Section 29(1) of the State Financial Corporations Act was held to be within the purview of Section 22(1) of the SICA.

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17. In Gram Panchayat and another v. Shree Vallabh Glass Works, Ltd., AIR 1990 SC 1017 the Supreme Court was dealing with a case where the Gram Panchayat had initiated coercive proceedings under Section 129 of the Bombay Village Panchayat Act to recover property tax and other amounts due from the company. The question before the Supreme Court was whether the Panchayat could recover the amount due to it from out of the properties of the sick industrial company, without the consent of the BIFR. After considering the provisions of the SICA, the Supreme Court has held that under Section 22(1), the nature of the proceedings, which are automatically suspended are: (1) winding up of the industrial company; (2) proceedings for execution, distress or the like against the properties of the sick industrial company; and (3) proceedings for the appointment of receiver. The proceedings in respect of these matters could, however, continue against the sick industrial company with the consent of the Board or the Appellate Authority, as the case may be. In paragraphs 10 and 11 of the aforesaid judgment, it was held as follows: - (AIR p.1020)

> " 10. In the light of the steps taken by the Board under Ss.16 and 17 of the Act, no proceedings for execution, distress or the like proceedings against any ' of the properties of the company shall lie or be proceeded further except with the consent of the Board. Indeed, there would be automatic suspension of such proceedings against the Company's properties. As soon as the inquiry under S.16 is ordered by the Board, the various proceedings set out under Sub-sec. (1) of S.22 would be deemed to have been suspended.
>
> 11. It may be against the principles of equity if the creditors are not allowed to recover their dues from the company, but such creditors may approach the board for permission to proceed against the company for the recovery of their dues/outstanding/over-dues or arrears by whatever name it is called. The Board at its discretion may accord its approval for proceeding against the company. If the approval is not granted, the remedy is not extinguished. It is only postponed. Sub-section (5) of S.22 provides for exclusion of the period during which the remedy is suspended while computing the period of limitation for recovering the dues."

18. In the case of Tata Davy, Ltd. V. State of Orissa, AIR 1998 SC 2298, again the Supreme Court was considering the provisions in relation to recovery of arrears of sales tax. The Supreme Court relied on the earlier judgment in the case of Shree Vallabh Glass Works, Ltd. (cited supra) and held that arrears of tax and the like dues from industrial companies that satisfies the conditions set out in Section 22(1) of the SICA cannot be recovered by coercive process, unless the Board gives its consent thereto.

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19. In Deputy Commissioner Tax Officer v. Corromandal Pharmaceuticals reported in (1997) 10 SCC 649, the Supreme Court considering the question as to whether the dues of amount of sales tax, which had occurred after the date of sanctioned scheme would fall within the purview of Section 22(1) of the SICA held that while the language of Section 22 (1) was wide, it would have to be construed reasonably to apply only to those dues which were reckoned or included in the sanctioned scheme. Consequently, where a sick industrial company had after the date of their sanctioned scheme collected the amount of sales tax, but had failed to pay it over to the revenue, it would not be open to the company to seek shelter under the provisions of Section 22(1) of the SICA. In that connection, the Supreme Court held as follows: - (SCC pp.658, 659)

> " The language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act, So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22(1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to collect after the date of the sanctioned scheme legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the spirit of the statute in a business sense, should be avoided."

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20. In Gujarat Steels Tubes Ltd., v. Virchandbhai B.Shah, AIR 1999 SC 3839, the Supreme Court had an occasion to consider the question as to whether the application for eviction under the Karnataka Rent Control Act was maintainable notwithstanding the provisions of Section 22 of the SICA. Relying on the decision in Shree Chamunde Mopeds Ltd., v. Church of South India Trust Association, AIR 1992 SC 1439, the Supreme Court held that the Rent Control Act gave protection to a statutory tenant to continue to

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occupy the premises but such right may not be regarded as property of the company under Section 22(1) of the SICA, and, therefore, the provisions of Section 22(1) of the SICA were not applicable to the eviction proceedings instituted by the landlord against the sick company.

21. In NTC Ltd. Vs. NTC Ltd., Emp. Union, 2004 (1) LLN 32, the Supreme Court held that pendency of rehabilitation scheme before the BIFR is not a ground to deny relief as under Section 5(2)(c) of Nationalisation Act of 1974. Paragraph 14 of the Judgment, which is material for our purpose, reads as follows: - (LLN p.37)

> "So far as the argument regarding no relief being admissible to the workers in the mills in view of rehabilitation schemes being worked out before the BIFR, we have to note that the proceedings have been pending since 1993, i.e., for more than ten years. The management was all along fully aware of the demand of the workers of the mills in this behalf. Their cases have been pending in Courts since much before the rehabilitation schemes were conceived of. How long shall the concerned workers be continued to be denied their legitimate claims? In the various deliberations with the workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before the BIFR is not a sufficient ground for us to deny relief to the staff/sub-staff working in the mills. As per the provisions of S.5(2)(c) of the Sick Textile Undertakings (Nationalisation) Act, 1974, the wages, salaries and other dues of the employees of the sick textile undertakings after the takeover of their managements by the Central Government are the responsibility of the Central Government. The Central Government has failed to discharge its responsibility for all these years by raising such specious pleas. The Central Government has to discharge its responsibility de hors the BIFR schemes."

22. In the light of the provisions of the EPF Act, and the Scheme framed there under, we are of the view that the rights of the employees under the Scheme are protected and the proceedings under the EPF Act do not come within the purview of the provisions of Section 22(1) of the SICA. An amendment to the EPF Act was made by Act 33 of 1988 in terms whereof proviso to Section 14-B has been introduced. Under Section 14-B where an employer makes default in payment of any contribution to the Fund, the Central Provident Fund Commissioner has been authorized to recover the damages by way of penalty not exceeding the amount of arrears. However, under the proviso appended thereto, the Central Board has been empowered to

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reduce the quantum of damages that may be required to be paid by a company in relation to an undertaking which is a sick industrial undertaking and in respect of which the scheme for rehabilitation has been sanctioned by the BIFR, subject to such terms and conditions as may be specified under the scheme. Parliament thus as a matter of legislative policy has enacted that the employer be granted a waiver of damages payable under Section 14-B where the undertaking of the employer is a sick industrial undertaking and the scheme for its rehabilitation has been sanctioned. There again, it must be noticed that the eligibility to grant waiver under Section 14-B is subject to those conditions which have been prescribed therein. Parliament having thus amended the EPF Act had taken within its purview the position of a sick industrial undertaking, the extent of the immunity which have been conferred upon such undertaking with reference to provident fund dues under the Act, must be confined to what has been legitimized by Parliament. The extent of the immunity or exemption cannot be extended beyond what was allowed in terms of the amendment to the EPF Act.

23. Paragraph 32-B of the Provident Fund Scheme expounds upon the second proviso to Section 14-B. Clause-B of Paragraph 32-B provides that the Central Board may allow waiver of damages up to 100% in cases where the BIFR for the reasons to be recorded in the scheme recommends such waiver. For the purpose of applicability of the second proviso, the pre-conditions, therefore, are: (1) the establishment must be sick industrial undertaking; and

(2) in respect of such sick company a scheme has been sanctioned by the BIFR for its rehabilitation. Such reduction or waiver would be subject to the terms and conditions as may be specified there under. The extent of immunity or exemption thus is limited. The same cannot be extended beyond that to include suspension of proceedings in relation to the provident funds dues recoverable under the EPF Act.

24. In Organo Chemical Industries vs. Union of India, (1979) 4 SCC 573, the Supreme Court categorically held that the EPF Act has been enacted with a view to provide social security measure and with a view to effectuate the Directive Principles of State Policy contained in Articles 39 and 41 of the Constitution of India. Justice Krishna Iyer in his concurring judgment observed: - (SCC pp.587, 591)

> " 27)……the scheme of the Act is that each employer and employee in every 'establishment' falling within the act do contribute into a statutory fund a tittle, viz., 6-1/4 percent of the wages to swell into a large Funds wherewith the workers who toil to produce the nation's wealth during their physically fit span of life may be provided some retrial benefits which will 'keep the pot boiling' and some source wherefrom loans to face unforeseen needs may be obtained. This social security measure is a humane homage the State pays to Articles 39 and 41 of the Constitution. The viability of the project

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depends on the employer duly deducting the workers' contribution from their wages, adding his own little and promptly depositing the mickle into the chest constituted by the Act. The mechanics of the system will suffer paralysis if the employer fails to perform his function. The dynamics of this beneficial statute derives its locomotive power from the funds regularly flowing into the statutory till.

28. The pragmatics of the situation is that if the stream of contributions were frozen by employers' defaults after due deduction from the wages and diversion for their own purposes, the scheme would be damnified by traumatic starvation of the Fund, public frustration from the failure of the project and psychic demoralization of the miserable beneficiaries when they find their wages deducted and the employer get away with it even after default in his own contribution and malversation of the workers' share. 'Damages' have a wider socially semantic connotation than pecuniary loss of interest on non-payment when a social welfare scheme suffers mayhem on account of the injury. Law expands concepts to embrace social needs so as to become functionally effectual.

40. The measure was enacted for the support of a weaker sector viz. the working class during the superannuated winter of their life. The financial reservoir for the distribution of the benefits is filled up by the employer collecting, by deducting from the workers' wages, completing it with his own equal share and duly making over the gross sums to the Fund. If the employer neglects to remit or diverts the moneys for alien purposes the Fund gets dry and the retirees are denied the meager support when they most need it. This prospect of destitution demoralizes the working class and frustrates the hopes of the community itself……."

25. In Sarvaraya Textiles Ltd. V. Commr., E.P.F., 2002-I-LLJ-611 (AP), the Division Bench of the Andhra Pradesh High Court has considered the provisions of the EPF Act vis-à-vis Section 22(1) of the SICA and held that the rights of the employees under the provident fund scheme are protected and the proceedings under the EPF Act do not come within the purview of the provisions of Section 22(1) of the SICA. Chief Justice S.B.Sinha (as he then was) speaking for the Bench held as follows: -

" The Scheme framed under the EPF Act, the welfare of the workman is in consonance with the

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directive principles of the State policy contained in Part IV of the Constitution and such scheme, in our opinion, cannot be allowed to be defeated by the operation of the provisions of Section 22(1) of the SICA. A plain reading of the provisions of Section 22(1) of SICA would make it clear that the proceedings under the EPF Act would not come within the purview thereof. Section 14-B of the EPF Act has, however, granted limited protection in relation to reduction of waiver of damages in respect of a sick industrial unit in relation to which a scheme for rehabilitation has been sanctioned by the BIFR. We are, therefore, of the view that the decisions in Mahrashtra Tubes Case (1993 AIR SCW 991) and Gram Panchayat's case (AIR 1990 SC 1017) have no application to the facts of the present case. The decision of the Apex Court in Organo Chemical Industries, (1979 Lab IC 1261) is also of no assistance to the case of the appellant."

26. In Ralliwolf Ltd. Vs. R.P.F.Commr.I, 2001-I-LLJ-1423(Bom), a learned single Judge of the Bombay High Court (Dr.D.Y.Chandrachud, J) after exhaustive discussion of the EPF Act and the SICA reached the conclusion that recovery of provident fund dues under the EPF Act do not fall within the purview of Section 22(1) of the SICA. The learned Judge observed: - (para.25 p. 1435)

"The provident fund and other dues payable under the E.P.F. Act, 1952 are part of the legitimate statutory settlements of the workers. The employer is obligated to pay the contribution of the employees as well as his own contribution to the Fund which is set up under the Act. The contribution of the employees, is, in fact, a deduction from the wages which are due and payable to the employees. The deduction which is made from the wages is required to be deposited into the Fund by the Employer. These contributions belong to the employees. The employees are entitled to those contributions and can draw upon them even while they are in service for meeting the unforeseen eventualities and exigencies that may arise in the life of an employee. They constitute an important measure of social security. The circumstances in which withdrawals and even advances can be given to an employee in service are specified in the scheme. No industrial undertaking can work or operate without the work which is rendered by the employees. No work can be demanded save and except for payment of wages and other statutory benefits. The payment of provident fund dues to the Fund, therefore, stands on the same footing

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> as the payment of wages which is due to the employees. This is an entitlement to which the employees are entitled to dint of the work which they have put in. These are dues which are payable whether or not an undertaking is employees' right to life under Article 21 of the Constitution."

Against the aforesaid judgment, an appeal was preferred and the Supreme Court was pleased to reject the Special Leave Petition.

27. In an unreported decision of the Division Bench of the Calcutta High Court in Kusum Engineering Co. Ltd. V s. Regional Provident Fund Commissioner (Appeal No.591 of 1990 and Matter No.2254 of 1990) it was held that the provident fund dues are statutory liability and the Provident Fund Act is a piece of social welfare legislation enacted for the purpose of welfare of the labourers. If the industry is to run, the labour welfare legislation has to be given effect to and that construction of the Act could not be given in such a way, which takes away or suspends the rights of the provident fund authorities from realizing the provident fund dues and/or damages. In Vikram Poddar Vs. Regional Provident Fund Commissioner, 2001 CHN 476, a learned single Judge of the Calcutta High Court held that merely because the company is a sick company and it has been referred to the BIFR, is not an impediment in recovering the dues of the provident fund. Similar is the view taken by another learned single Judge of the same High Court in Universal Paper Mills Ltd. Vs. Regional Provident Fund Commissioner, 2001-II-LLJ 1193(Cal). In I.D.Corporation, Orissa Ltd. Vs. R.F.Commr., 2001 Lab & I.C. 3821, the Orissa High Court has held that provident fund dues of an employee and steps like certificate or recovery proceedings taken by the Provident Fund Commissioner for realization or recovery of such dues under the provisions of the EPF Act cannot be held to be covered under Section 22(1) of the SICA.

28. In the case of Modi Industries Limited v. Addl. Labour Commissioner, Ghaziabad and others, (1993 (2) L.L.N. 548), a learned single Judge of the Allahabad High Court after considering the provisions of the SICA held as follows: - (para. 14 p.553)

> "In my opinion, the purpose and object of S.22 cannot be to cover those proceedings as actions which are necessary for running the industry irrespective of the fact whether it is sick or non-sick. If the industry cannot run without workers, the workers also cannot be expected to work without payment of their wages. The timely payment of the wages for which the provisions of the Act of 1978 has been enacted. Both the Acts are thus complimentary to each other. Section 22 cannot thus affect the proceedings taken under S.3 of the Act of 1978 for compelling petitioner

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to make payment of the wages already accrued to the workers."

In coming to the aforesaid conclusion, the learned single Judge of the Allahabad High Court has relied on certain observations made by the Supreme Court in the case of Shree Chamundi Mopeds Ltd. (cited supra) and further observed in paragraph 15 as follows: -

"15. …. The Parliament while putting S.22 of the Act, 1985, could never have intended that the industrial unit under the garb of sickness or for any like difficulty may be allowed to shirk its liability to pay the wages to its workers for the work they have done…."

29. In Baburao P.Tawade v. HES Ltd. Bombay, 1997-III-L.L.J (Suppl.) - 265(Bom), Justice B.N.Srikrishna (as he then was) held that the payment of earned wages could not have been within the purview of Section 22(1) of the SICA and the provisions of the SICA must be held to apply only to such proceedings which are not required for the day-to-day running of the sick industrial company. The learned Judge noticed that Section 22(1) of the SICA had been amended by Parliament in 1993 to expand its width. The object of Section 22, according to the judgment of the learned Judge, was to ensure that "the attempts at revival of a sick industrial company are not rendered nugatory by predatory creditors nibbling away at the capital and other assets of the industrial company which is being revived". The learned Judge referred to the judgments of the Supreme Court in Gram Panchayat v. Shree Vallabh Glass Works Ltd., (cited supra) and Maharashtra Tubes v. S.I.I.C of Maharashtra (cited supra) as well as in the case of Shree Chamundi Mopeds Ltd (cited supra) held by the Supreme Court that Section 22(1) would not come in the way of a proceeding instituted by the landlord of a sick industrial company for eviction on the ground of default in the payment of rent. Before the learned Judge, the judgment of the learned single Judge of the Allahabad High Court in Modi Industries Ltd., v. Addl.Labour Commissioner, Ghaziabad (supra) was cited. On the review of the law, Justice B.N.Srikrishna concluded as follows: - (at p. 274)

" 11. No construction can be put upon the provisions of Section 22, which could result in a situation of exploitation of human beings, contrary to the provisions of our constitutional directives. I am therefore, unable to accept the contention that the payment of earned wages to the workmen (it cannot be disputed that payment under settlement would be 'wages' within the meaning of Section 2(rr) of the Industrial Disputes Act) was intended to be defeated by invoking the bar under Section 22(1) or to drive the workmen to run to New Delhi for seeking the consent of the BIFR, every time their monthly wages were required to be paid. That surely, was not the Parliament's intention, in my view. The reconciliation suggested by the learned Judge in

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Modi Industries case (surpa) appeals to me and, therefore, the bar in Section 22(1) of the SICA must be held to apply only to such proceedings which are not required for the day-to-day running of the sick industrial company, even under a sanctioned scheme or otherwise. Any other interpretation would lead to a ludicrous and unintended result."

30. The aforesaid judgment of the learned single Judge thus holds that Section 22 (1) of the SICA must be reasonably construed to refer to only those proceedings which are not required for the day-to-day operation of the company, and therefore, a proceeding for recovery of earned wages would not fall within the purview of Section 22(1). A similar view has been taken by the Bombay High Court, to which one of us (A.P.Shah, C.J) was a party in Modistone Ltd. V. Deputy Commissioner of Labour, 1999-II-LLJ-1043(Bom) wherein it was held that Section 22 (1) of the SICA would not operate in the field of payment of wages, gratuity and other statutory benefits payable to the workmen. It was noted that the judgment delivered by Justice B.N.Srikrishna in Baburao P.Tawade's case (cited supra) was approved in the case of Girni Kamgar Sanghatana Samiti v. Khatau Mackanji Spinning ands Weaving Co.Ltd., 1998-II-LLJ-264(Bom) and that a special Leave Petition filed against the said judgment was rejected by the Supreme Court. The position of law summed up in the said judgment is as follows: - (at p.1044)

"9.Thus, it is a settled law that it is not open for the company to take shelter of Section 22 in respect of the workers' wages and other dues. A feeble attempt was made by Mr.Vasudeo to distinguish the above judgment by contending that the present case relates to the payment of gratuity to the workmen and since such claim is in the nature of arrears, the case would be governed by the decision of the Apex Court in Tata Davy Ltd. V. State of Orrisa and Ors. (supra). I am unable to accept the submission made by the learned counsel for the petitioners. By no stretch of imagination gratuity can be called arrears of wages. The basic minimum which the workman is entitled to get is the wages and the gratuity and other statutory benefits."

31. In Poysha Inds.Co. Ltd. V. Collector, Ghaziabad, 1988 (79) FLR 167 (All), a learned single Judge of the Allahabad High Court held as follows: -

"In the present case the recovery related to claim for wages by the workmen. Admittedly, the petitioner-company has not terminated the relationship of master and servant between the company and its workmen. No case has been made out of lay-off and lock-out or retrenchment or closure. Therefore, so long relationship of

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master and servant between the company and its workmen continues, the employer is bound to pay wages to the workmen even if the employer for some reason does not feel inclined to get actually the work done by the workmen. In respect of such payment the employer cannot dispute its liability because of the sickness of the Unit or pendency of the scheme for rehabilitation. Therefore,I am of the opinion that the proceedings for recovery of such wages is not covered by Section 22 of the said Act of 1985. Relying on the principle laid down in the case of Shri Chamundi Mopeds Limited (supra), I find that in case of such proceeding no consent from the B.I.F.R is required. Contrary interpretation of law will result in compelling the present workmen to continue to discharge duties without any payment of wages and this also cannot be the intention of the legislature. If the purpose of the said Act of 1985 is to rehabilitate the company itself, the same cannot mean that the workmen are to be compelled to continue without payment of wages as workmen are important constituent of the industrial unit. The said Act cannot be interpreted to mean that it saves only the employer and not the employees. Such an interpretation will not only leave the workmen to starve but also will lead to slavery."

32. A Division Bench of the Karnataka High Court in the case of Indian Plywood Manufacturing Company Ltd. v. Commissioner of Labour and others, 2000 (2) L.L.N 677(Kar), following the decision of the Allahabad High Court in the case of Modi Industries case (cited supra) held that the impugned notice and recovery certificate under Section 33(c) of the Industrial Disputes Act cannot be regarded as governed by Section 22(1) of the SICA. Similar is the view of the Uttranchal High Court in Uptron India Ltd. v. P.O. Labour Court, 2004 -2-LLJ page 378 and that of the Madhya Pradesh High Court in Kedia Distilleries v. General Secretary, Chhatisgarh Chemical Mill Majdoor Sangh, 2001 LAB I.C. 1815 (M.P).

33. In Ranjan Bhagwant Kedar v. HMP Engineers Ltd. 2004-III-LLJ-939 (Bombay), to which one of us (A.P.Shah, C.J.) was a party, it has been held that Section 22(1) of the SICA could have no application to the recovery under recovery certificate issued by the Industrial Court. A learned single Judge of the Bombay High Court in Carona Ltd. v. Sitaram Atmaram Ghag, 2000(3) L.L.N.167 (Bom.) considered the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 vis-à-vis Section 22 (1) of the SICA and rejected the argument that wages and terminal benefits to which workers are entitled are not payable until permission is obtained from the BIFR. The learned Judge observed that it is impossible to conceive a situation where Parliament, duly

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knowing the true import of Article 21 of the Constitution would be deemed and presumed to have taken a view that the wages and terminal benefits to which the workers are entitled to are not payable until permission is obtained from the Board. Wages and terminal benefits to which the workers are entitled, must constitute and deemed to be part of their right to life. They are the minimum required for their sustenance and of their families. It is impossible in this situation to consider that for the purpose of rehabilitation of an industry workers must be denied their legitimate dues. Even in a case of winding up, Parliament realizing the need to protect the workers has made them pari passu charge holders with secured creditors by introducing Section 529-A and amending Sections 529 and 530 of the Companies' Act. In these circumstances workers cannot be put in a worse position than that of a company which is being wound up.

34. The unreported judgment of the Division Bench of this Court in Writ Appeal No. 1831 of 2001 seems to have proceeded on the assumption that Section 22(1) of the SICA is implicitly applicable to the workers dues as well as their claims for gratuity, provident fund, etc. The Division Bench has not considered the reported judgment of other Courts and the effect of the amended Section 14-B of the EPF Act. In T.Venkatesan v. District Collector, Tiruvallur, 2004(1) LLJ 133 (Mad.) a learned single Judge of this Court following the unreported decision of the Division Bench in Writ Appeal No.1831 of 2001 has held that the protection granted to the sick companies under Section 22 of the SICA against levy or execution or distress proceedings without consent of the BIFR or Appellate Authority cover proceedings for recovery of gratuity. In our opinion, the unreported decision of the Division Bench in Writ Appeal No.1831 of 2001 and the decision of the learned single Judge in T.Venkatesan v. District Collector, Tiruvallur (cited supra) do not lay down the correct law. Section 22 of the SICA would not operate in the filed of payment of wages, gratuity and other statutory benefits payable to the workmen.

35. We may also refer to certain decisions cited by the learned counsel appearing for the appellants/intervenors before us. The decision of the learned single of the Karnataka High Court in Doddaballapur Spinning Mills Private Limited v. R.P.F.Commissioner, 2006 –I-LLJ 835 (Kar) cited by the appellants/interveners is contrary to the decision of the Division Bench of the same High Court in Indian Plywood Manufacturing Company Limited v. Commissioner of Labour and others (cited supra). It was contended before the Division Bench that as the provisions of Section 22 of the SICA were made applicable, the notice and certificate for attachment and sale of assets should be quashed. The Division Bench rejected the said contention and further proceeded to hold that Section 22 of the SICA was no bar to initiate proceedings for the amount payable to the workmen. The next decision cited by the appellants/interveners is of the Calcutta High Court in Tushar Kanti Samaddar v. Tyre Corporation of India Limited, 2000 LAB I.C 3040 (Cal.). The only question canvassed before the Division Bench was as to whether the respondent/Corporation was justified in withholding any of the money payable to the appellant who had resigned from service. That question

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was answered against the Corporation. It was, however, argued on behalf of the Corporation that the Court cannot direct payment of any money to the appellant by virtue of provisions of Section 22 of the SICA. According to the Corporation, reference was made to the BIFR and a scheme was in course of preparation under Section 18 of the SICA. It was submitted that Section 22 of the Act specifically forbid "any suit for recovery of money". The Division Bench without going into the question as to whether the provisions of Section 22 of the SICA will apply to the proceedings under Article 226 of the Constitution of India has merely clarified that any proceedings for recovery of money due to him may be taken by the appellant subject to consent of the BIFR as provided under Section 22(1) of the SICA. This decision, therefore, is of no assistance to the appellants/intervenors. In fact, in subsequent decisions of the same High Court in Vikram Poddar vs. Regional Provident Fund Commissioner (cited supra) and Universal Paper Mills Limited v. Regional Provident Fund Commissioner (cited supra) it was specifically held that the provisions of Section 22 of the SICA have no application to the provident fund scheme framed under the provisions of the EPF Act and the dues under the EPF Act do not fall within the purview of Section 22(1) of the SICA. Reliance was also placed on an unreported decision of the Punjab and Harayana High Court in Suraj Textile Mills, Malour v. State of Punjab and others (W.P.No.8650 of 1998 decided on 30.11.90), reported decision of the same High Court in Cement Corporation of India v. P.O.CGIR, 2002-III-LLN 514 (P&H) and a decision of the learned single Judge of the Gujarat High Court in S.L.M.Maneklal Industrial Ltd. v.R.P.F.Commissioner, 1997-III-LLN 194 (Guj.). In none of these decisions, the amended Section 14-B of the EPF Act was considered.

36. On behalf of some of the intervenors, an alternative submission was advanced that even assuming that the provisions of Section 22(1) of the SICA are inapplicable to the contribution of the employees or employer, the provisions for levy of interest on delayed payments and the administrative charges as well as recovery of damages under Section 14-B is covered by Section 22(1) of the SICA. The submission is devoid of any substance. The levy of interest for delayed payment as well as the administrative charges are very much part of provident fund under the scheme framed under the EPF Act. As far as damages under Section 14-B is concerned, it would be open for a sick industrial company to request the authorities under the EPF Act, to postpone the determination of damages till the reference is finally decided by the BIFR and or the Appellate Authority, as the case may be. In case such a request is made, the concerned authority shall pass appropriate orders in the light of the provision of Section 14-B of the EPF Act. We may hasten to add that the issue of damages is not involved in any of the matters which have been placed before us.

37. For all the aforesaid reasons, we are of the considered view that the provident fund dues under the EPF Act are not covered by Section 22(1) of the SICA and the provident fund benefits which the employees are entitled to cannot be placed on the same footing as

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taxes of the Government or dues of other Commercial Venture or dues to Corporation or like others. In the result, Writ Appeal Nos. 173, 230 of 2006 as well as W.P.Nos. 41166 of 2005 and 1662 of 2006 are dismissed with costs. The appellants are given three months time to make payment of the provident fund dues as per the determination made by the Provident Fund Authorities. Registry is directed to place W.P.No.4908 of 2001 and connected writ petitions before the appropriate Bench for disposal in the light of our judgment.

pv/sm

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

TO

1. THE ASST. PRIOVIDENT FUND COMMISSIONER
SUB REGIONAL OFFICE, SALEM - 636 004.

2. THE RECOVERY OFFICER-II, SUB REGIONAL OFFICE,
SRI JAYALAKSHMI PLAZA, ANNA SALAI,.
SWARNAPURI, SALEM.

3. THE EMPLOYEES PROVIDENT FUND ORGANISATION
REGIONAL OFFICE, LDC ROAD,
MADURAI-625 002.

1 CC TO MR.S. SIVANANDAM, ADVOCATE SR 47216 & 47216
1 CC TO M/S V.J. ATHA, ADAVOCATE SR 47616 & 47615
1 CC TO MR. BALAN HARIDOSS, ADVOCATE SR 47066

W.A.Nos.173 & 230 /2006
and
W.P.No.4908 of 2001 etc. batch

Delivered on : 10 ..10..2006.

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